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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )

Telephone Number Portability )

BellSouth Corporation Petition for  
Declaratory Ruling and/or Waiver )

CC Docket No. 95-116

## ORDER

Adopted: April 8, 2004

Released: April 13, 2004

By the Commission: Commissioners Copps and Adelstein issuing separate statements

## I. INTRODUCTION

1 In this order, we grant BellSouth's request that we waive the rule that limits the time over which it may recover its carrier-specific costs of implementing local number portability (LNP). Specifically, we grant a waiver of the five-year recovery rule. We further extend this waiver to all incumbent local exchange carriers (LECs) that did not include the initial costs of implementing intermodal LNP in already-filed LNP cost recovery tariffs.<sup>1</sup> Any incumbent LEC that has not yet filed a tariff to recover its LNP implementation costs will be subject to the five-year rule. Thus, carriers that have not yet begun to recover LNP costs should ensure that future tariff filings include the costs of implementing intermodal LNP.

## II. BACKGROUND

2. *Local Number Portability is Ordered and Cost Recovery Mechanisms are Established*  
Section 251(b) of the Communications Act of 1934, as amended (the Act), requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."<sup>2</sup> Number portability allows residential and business telephone customers to retain, at the same location, their existing local telephone numbers when switching from one telephone service provider to another.<sup>3</sup> In the 1996 LNP *First Report and Order*, the Commission promulgated rules and deployment schedules for the implementation of number portability.<sup>4</sup> In the *First Report and Order*, the Commission also determined that requiring wireless carriers to provide number portability would facilitate competition.<sup>5</sup> Accordingly, the Commission required both LECs and wireless providers to

<sup>1</sup> Intermodal LNP refers to porting between wireline and wireless carriers (i.e., porting a number from a wireline carrier to a wireless carrier or porting a number from a wireless carrier to a wireline carrier).

<sup>2</sup> 47 U.S.C. § 251(b)(2).

<sup>3</sup> See 47 U.S.C. § 153(30).

<sup>4</sup> *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (*First Report and Order*)(subsequent history omitted).

<sup>5</sup> See *First Report and Order*, 11 FCC Rcd at 8431-32, paras. 152-53.

effect service provider portability, albeit on slightly different schedules.<sup>6</sup> Specifically, the *First Report and Order* directed wireline carriers to complete LNP deployment in the 100 largest MSAs by December 31, 1998.<sup>7</sup> Wireless carriers were directed to begin providing service provider portability throughout their networks by June 30, 1999.<sup>8</sup> The deadline for wireless portability, however, was extended several times.<sup>9</sup> Ultimately, the Commission established November 24, 2003, as the date on which wireless carriers in the top 100 MSAs must be capable of wireless-to-wireless and intermodal porting. Thus the deadline for intermodal portability was extended by more than four years from the original deadline. At the same time that wireless providers became LNP capable, their wireline counterparts were required to provide intermodal portability.<sup>10</sup>

3. Section 251(e)(2) of the Act also requires that the costs of establishing number portability be borne by all telecommunications carriers on a "competitively neutral basis," and vests the Commission with authority to establish a cost recovery system that satisfies this requirement.<sup>11</sup> Accordingly, in the May 1998 *Cost Recovery Order*, the Commission established the rules and standards that govern carrier cost recovery for providing LNP.<sup>12</sup> In that order, the Commission determined that it was competitively

<sup>6</sup> "Service provider portability" refers to the ability of end users to retain the same telephone number when changing from one service provider, including wireline and wireless service providers, to another. See *Telephone Number Portability*, CC Docket No. 95-116, Notice of Proposed Rulemaking, 10 FCC Rcd at 12350, 12355 para. 13 (1995). The term "service provider portability" is synonymous with the statutory term "number portability." *First Report and Order*, 11 FCC Rcd at 8367, para. 27.

<sup>7</sup> *First Report and Order*, 11 FCC Rcd at 8393, para. 77; Appendix F.

<sup>8</sup> *First Report and Order*, 11 FCC Rcd at 8440, para. 166, *aff'd*, *Telephone Number Portability*, CC Docket No. 95-116, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7313, paras. 136-37 (1997). The Commission also required CMRS carriers to have the capability to deliver calls from their networks to ported numbers by December 31, 1998. *Id.* at 8439-40, para. 165. Fulfillment of this requirement allowed customers of CMRS providers to complete calls to wireline customers who had ported their telephone numbers. See *Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, WT Docket No. 01-184, Memorandum Opinion and Order, 17 FCC Rcd 14972, 14973, para. 3 & n.8 (2002) (*Verizon Wireless LNP Forbearance Order*), review denied in part and dismissed in part sub nom *Cellular Telecommunications & Internet Ass'n v. FCC*, 330 F.3d 502 (D.C. Cir. 2003).

<sup>9</sup> *Telephone Number Portability, Petition for Extension of Implementation Deadlines of the Cellular Telecommunications Industry Association*, CC Docket No. 95-116, Memorandum Opinion and Order, 13 FCC Rcd 16315, 16317, para. 7 (WTB 1998) (granting extension to provide additional time for the wireless industry to develop and test standards in order to ensure efficient deployment of wireless number portability), *Telephone Number Portability, Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations*, WT Docket No. 98-229, Memorandum Opinion and Order, 14 FCC Rcd 3092, 3104-05, para. 25 (1999) (granting limited forbearance from imposition of the LNP obligations on CMRS providers to allow the industry additional time to develop and deploy LNP technology), reconsideration denied, 15 FCC Rcd 4727 (2000); *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14972, para. 1 (extending wireless LNP implementation deadline for one additional year, to enable the industry to resolve remaining LNP implementation issues, and to accommodate the separate implementation of thousands-block number pooling by CMRS providers).

<sup>10</sup> See *Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23700 n.12 (2003) (*Intermodal Order*).

<sup>11</sup> 47 U.S.C. § 251(e)(2) ("The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.")

<sup>12</sup> *Telephone Number Portability*, CC Docket No. 95-116, Third Report and Order, 13 FCC Rcd 11701 (1998) (*Cost Recovery Order*), *aff'd*, *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002) (*Order on Reconsideration and* (continued....)

neutral to allow incumbent LECs to recover their carrier-specific costs of providing LNP through a tariffed five-year, levelized monthly end-user charge, which would begin no earlier than February 1, 1999 and end no later than five years after it began.<sup>13</sup> The Commission also permitted nondominant carriers (including wireless providers) to recover their LNP costs in any lawful manner.<sup>14</sup> Subsequently, in December 1998, the Common Carrier Bureau issued the *Cost Classification Order*, which provided additional guidance to incumbent LECs concerning LNP cost recovery.<sup>15</sup> In 1999, the larger price-cap incumbent LECs, including Petitioner BellSouth, filed tariffs to recover their carrier-specific LNP costs, and, pursuant to these tariffs, began to assess monthly LNP charges on their end users.<sup>16</sup> Since that time, a number of other smaller incumbent LECs also have filed tariffs and implemented LNP cost recovery through charges to their end-users.

4. *BellSouth Petition.* Shortly before the November 24, 2003 deadline for wireless carriers to begin implementing service provider LNP, and thus for wireline carriers to begin implementing intermodal LNP, BellSouth filed the instant Petition for Declaratory Ruling and/or Waiver.<sup>17</sup> In its Petition, BellSouth requests that the Commission issue a declaratory ruling that wireline carriers are entitled to a reasonable opportunity to recover their costs of implementing intermodal LNP in accordance with section 251(e)(2) of the Act.<sup>18</sup> To that end, BellSouth requests that the Commission waive section 52.33 of the Commission's rules, either to allow BellSouth to increase the current end-user LNP charge for the remainder of the five-year recovery period (which would de-levelize the charge), or to extend the

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*Review*). The Commission also delegated authority to the Chief, Common Carrier Bureau, to determine appropriate methods for apportioning joint costs among portability and nonportability services, and to issue any orders to provide guidance to carriers before they filed their tariffs. *Cost Recovery Order*, 13 FCC Rcd at 11740, 11784, paras. 75, 167.

<sup>13</sup> See *Cost Recovery Order*, 13 FCC Rcd at 11776-77, paras. 142-43; 47 C.F.R. § 52.33(a)(1). A "levelized" rate is one that remains constant over a recovery period. *Cost Recovery Order*, 11 FCC Rcd at 11777 n.478. The Commission also established separate mechanisms for recovery of carrier-specific costs directly related to: (1) prearranged and default query services, for carriers performing queries for other carriers; see *id.* at 11778-79, para. 147, 47 C.F.R. § 52.33(a)(2); and (2) allocated LNP administration and query costs, for certain carriers participating in extended area service calling plans. See *Order on Reconsideration and Review*, 17 FCC Rcd at 2603-05, paras. 52-58; 47 C.F.R. § 52.33(a)(3).

<sup>14</sup> *Cost Recovery Order*, 11 FCC Rcd at 11774, para. 136; 47 C.F.R. § 52.33(b).

<sup>15</sup> *Telephone Number Portability Cost Classification Proceeding*, CC Docket No. 95-116, Memorandum Opinion and Order, 13 FCC Rcd 24495 (CCB 1998) (*Cost Classification Order*), *aff'd*, *Order on Reconsideration and Review*, 17 FCC Rcd 2578.

<sup>16</sup> See, e.g., *Long-Term Number Portability Tariff Filings*, *US WEST Communications, Inc.*, CC Docket No. 99-35, Memorandum Opinion and Order, 14 FCC Rcd 11983 (1999) (*US WEST Investigation Order*); *Long-Term Number Portability Tariff Filings*, *Ameritech Operating Companies, et al.*, CC Docket No. 99-35, Memorandum Opinion and Order, 14 FCC Rcd 11883 (1999) (*Ameritech Investigation Order*); *Long-Term Telephone Number Portability Tariff Filing of BellSouth Telecommunications, Inc.*, CC Docket No. 99-35, Reconsideration of Decision to Suspend and Investigate Tariff Filing of BellSouth Telecommunications, Inc., 14 FCC Rcd 9344 (CCB CPD 1999).

<sup>17</sup> BellSouth Corporation Petition for Declaratory Ruling and/or Waiver, CC Docket No. 95-116 (filed Nov. 14, 2003) (BellSouth Petition).

<sup>18</sup> BellSouth Petition at 1-2. BellSouth characterizes its costs as those associated with implementing wireless LNP. Upon reviewing the Petition and comments of carriers discussing the nature of the costs incurred, however, we believe it is more accurate to characterize the additional costs as the costs of implementing intermodal LNP, rather than uniquely related to wireless porting. Specifically, BellSouth is incurring these costs to modify its systems to recognize, accommodate, and process ports between wireline and wireless numbers, and to differentiate wireless from wireline ports. See BellSouth Petition at 14-18.

permissible recovery period beyond the five-year period specified in the rule.<sup>19</sup> BellSouth explains that currently it assesses a 35-cent LNP charge on its end users, which first appeared on its customers' bills in May 1999.<sup>20</sup> Because the charge was set in compliance with section 52.33 of the Commission's rules, it is scheduled to expire in May of this year.<sup>21</sup> Due to the delays and uncertainties associated with implementing wireless LNP, however, BellSouth only included costs related to the implementation of wireline LNP in its 1999 tariff filing in which the 35-cent charge was set.<sup>22</sup> Accordingly, wireline LNP costs are the only costs that BellSouth will have recovered from its end users in its soon-to-expire charge.<sup>23</sup>

5. BellSouth argues that good cause supports a grant of its waiver request. Specifically, BellSouth argues that the Commission anticipated in the *Cost Recovery Order* that the costs associated with implementing intermodal LNP were recoverable as "cost[s] of ... number portability" and must "be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission," pursuant to the Act.<sup>24</sup> It further argues that the Commission found that the only permissible way for incumbent LECs to recover their portability costs is through an end-user charge.<sup>25</sup> Nevertheless, BellSouth argues, it has not yet been afforded a reasonable opportunity to recover the costs of implementing intermodal LNP.<sup>26</sup>

6. If permitted to assess a new or modified charge, BellSouth estimates that it will seek to recover \$38 million additional costs for intermodal LNP.<sup>27</sup> The charge would allow BellSouth to recover (1) its portion of shared regional costs; (2) costs for modifications to OSS to increase the capacity of its systems and to augment interfaces with other carriers and with regional and national LNP databases; and (3) incremental labor costs.<sup>28</sup> As noted, these intermodal LNP implementation costs are in addition to the

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<sup>19</sup> BellSouth Petition at 2.

<sup>20</sup> BellSouth Petition at 8.

<sup>21</sup> See BellSouth Petition at 8. As noted, section 52.33 permits incumbent LECs to recover their carrier-specific costs of providing LNP through a levelized monthly end-user charge, which is to end no later than five years after it begins. See 47 C.F.R. § 52.33(a)(1).

<sup>22</sup> BellSouth argues that, because the industry was still developing wireless LNP requirements and resolving wireless LNP issues in early 1999, it was impossible for the incumbents to include these costs in their original cost submissions. BellSouth Petition at 8-9. Specifically, it points out that, although the First Report on Wireless Wireline Integration was released in May 1998, the Second and Third Reports, which addressed technical intermodal porting issues, were not released until June 1999 and September 2000, respectively. See BellSouth Petition at 10-11 & n.36 (citing North American Numbering Council Local Number Portability Administration Working Group Report on Wireless Wireline Integration, May 8, 1998, CC Docket No. 95-116 (filed May 18, 1998) (First Report on Wireless Wireline Integration); North American Numbering Council Local Number Portability Administration Working Group Second Report on Wireless Wireline Integration, June 30, 1999, CC Docket No. 95-116 (filed Nov. 4, 1999) (Second Report on Wireless Wireline Integration); North American Numbering Council Local Number Portability Administration Working Group Third Report on Wireless Wireline Integration, Sept. 30, 2000, CC Docket No. 95-116 (filed Nov. 29, 2000) (Third Report on Wireless Wireline Integration)).

<sup>23</sup> BellSouth Petition at 9.

<sup>24</sup> BellSouth Petition at 5-6 (citing, *inter alia*, 47 U.S.C. § 251(e)(2); *Cost Recovery Order*, 13 FCC Rcd at 11707, para. 9)); 21.

<sup>25</sup> BellSouth Petition at 7-8, 23.

<sup>26</sup> See BellSouth Petition at 23.

<sup>27</sup> BellSouth Petition at 11 & n.40.

<sup>28</sup> See BellSouth Petition at 12-18.

costs BellSouth incurred to implement wireline-only LNP.<sup>29</sup> BellSouth posits several alternative schedules for recovery of its intermodal LNP costs. For example, if recovery were permitted for a hypothetical six-month period, BellSouth anticipates that it would charge its end users 22 cents per month for six months.<sup>30</sup>

7 *Comments.* Six carriers and USTA filed comments, and six carriers, including BellSouth, filed reply comments. No commenter opposed the requested end-user charges. All incumbent LECs filing comments and USTA support BellSouth's petition and ask that the Commission grant relief to all similarly situated incumbent LECs.<sup>31</sup> These carriers state that they also are incurring OSS modification, employee, and other costs in connection with the implementation of wireless LNP.<sup>32</sup> Incumbent LEC commenters argue that the Commission never distinguished the costs of implementing intermodal LNP from other LNP costs, and thus intermodal costs should be recoverable to the same extent as the costs of implementing wireline LNP.<sup>33</sup> Verizon asserts that, if intermodal portability had been implemented at the same time as wireline portability, intermodal costs would have been included in and recovered through the original tariff filings.<sup>34</sup> In fact, Sprint relates that, in its 1999 tariff filing it did attempt to recover projected costs associated with implementation of intermodal LNP. Sprint states that Commission staff directed it to remove over \$10 million of OSS costs from its 1999 filing because, given the status of intermodal LNP implementation at that time, associated costs were too speculative.<sup>35</sup> Thus, even if estimated intermodal costs had been included in the carriers' filings prior to the implementation of wireless LNP, commenters argue that projections would have been speculative and incorrect, and the Commission would have rejected them.<sup>36</sup> These commenters argue that to deny the incumbent LECs an opportunity to recover the costs of implementing intermodal LNP now would violate the competitive neutrality mandate of section 251(e), and the Commission's *Cost Recovery Order*.<sup>37</sup> They further argue that permitting recovery now that intermodal LNP has been deployed would satisfy the requirement that incumbent LECs recover portability costs from end users only when the latter are reasonably able to

<sup>29</sup> BellSouth also claims that the costs for which it seeks additional recovery satisfy the cost recovery standards set forth in the *Cost Recovery Order* and the *Cost Classification Order*. See BellSouth Petition at 11-14.

<sup>30</sup> BellSouth Petition at 20. Alternatively, BellSouth suggests it could impose a 43 cent charge for three months, or a one-time charge of \$1.21. *Id.* BellSouth's fourth proposal, which was to increase the current 35 cent charge to 66 cents from January through May, 2004, was impractical given the timing of its petition. See also *infra*, at para. 17.

<sup>31</sup> See CenturyTel Comments at 2; SBC Comments at 1; Sprint Comments at 2; Verizon Comments at 1; Valor Reply at 2; see USTA Comments at 5.

<sup>32</sup> See, e.g., CenturyTel Comments at 2-3; Verizon Comments at 6-7; see Sprint Comments at 2. Verizon estimates it will seek recovery of \$59 million additional costs. See Verizon Comments at 6-7. Other commenters did not report their estimated costs of implementing intermodal LNP.

<sup>33</sup> CenturyTel Comments at 3; Verizon Comments at 2-3; see Sprint Comments at 2.

<sup>34</sup> Verizon Comments at 7.

<sup>35</sup> See Sprint Comments at 1-2; see also SBC Comments at 10 & n.37 (citing *Long-Term Number Portability Tariff Filings of Sprint Local Telephone Cos.*, CC Docket No. 99-35, Memorandum Opinion and Order, 14 FCC Rcd 2778, 2779-80, para. 4 (CCB CPD 1999) (*Sprint Suspension Order*); *Long-Term Number Portability Tariff Filings of Sprint Local Telephone Cos.*, CC Docket No. 99-35, Reconsideration of Decision to Suspend and Investigate Tariff Filings of Sprint Local Telephone Companies, 14 FCC Rcd 3828, 3829, para. 3 (CCB CPD 1999) (*Sprint Reconsideration Order*)); Verizon Comments at 3-4 (same).

<sup>36</sup> See SBC Comments at 6-7, 9-10, USTA Comments at 4; Verizon Comments at 3-4.

<sup>37</sup> CenturyTel Comments at 3; Sprint Comments at 3; BellSouth Reply at 12-13. SBC argues that, because incumbent LECs can only recover their costs through an end-user charge but other carriers may recover their costs by any lawful means, denying intermodal LNP recovery to incumbent LECs would not be competitively neutral. SBC Comments at 3; see also Sprint Comments at 3.

receive the direct benefits of number portability.<sup>38</sup>

8. Although AT&T does not oppose additional cost recovery, it urges the Commission to require a cost study from each carrier that seeks additional recovery.<sup>39</sup> Similarly, although Nextel and Verizon Wireless do not oppose BellSouth's petition, they request that the Commission ensure that wireline carriers do not recover intermodal LNP implementation costs twice: first, from other carriers and second, from their end users.<sup>40</sup> Verizon Wireless requests that the Commission state explicitly that an end-user surcharge is the *only* appropriate method for incumbent LECs to recover intermodal LNP charges.<sup>41</sup> Nextel also argues that incumbent LECs should be barred from recovering a porting charge from their customers when such customers seek to port their wireline number to a wireless carrier.<sup>42</sup> Verizon Wireless also argues that, because the Commission did not rely on section 251 in mandating number portability for CMRS providers, it should not base any grant of BellSouth's petition on section 251.<sup>43</sup>

9 Citing outstanding issues in this docket relating to intermodal porting from outside a rate center and provisioning intervals, CenturyTel and Sprint also ask the Commission to extend its ruling to permit the recovery of any costs that wireline carriers may incur complying with future Commission orders relating to number portability.<sup>44</sup>

### III. DISCUSSION

10 We find that good cause exists to waive, for certain incumbent LECs, the rule that limits the period over which carrier-specific costs of implementing local number portability may be recovered.<sup>45</sup> Special circumstances exist for those incumbent LECs who, due to multiple extensions of the intermodal LNP deadline and associated uncertainties, were unable to include these costs in their original LNP tariff filings and thus did not recover these costs through their original end-user charges. We find that a limited

<sup>38</sup> CenturyTel Comments at 5 (citing *Cost Recovery Order*, 13 FCC Rcd at 11776, paras. 142-43); SBC Comments at 13 (same); Sprint Comments at 2-3 (same), *see also* USTA Comments at 4.

<sup>39</sup> *See* AT&T Comments at 5-7; AT&T Reply at 4.

<sup>40</sup> *See* Verizon Wireless Comments at 1-2, 4-6, Nextel Reply at 6.

<sup>41</sup> Verizon Wireless argues that a carrier-to-carrier charge would be inconsistent with the statute and the Commission's prior rulings and would not, accordingly, be competitively neutral. *See* Verizon Wireless Comments at 1-2, 4-5, *see also* Nextel Reply at 4-5 (citing *Telephone Number Portability*, CC Docket No. 95-116, Fourth Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 16459, 16480, para. 35, 36 (1999), *Cost Recovery Order*, 13 FCC Rcd at 11726-27, para. 41). Verizon Wireless complains that BellSouth has stated it will assess multiple transaction charges to recover intermodal porting expenses, specifically (1) a \$15 per port charge for LNP requests sent through a fax-based system; (2) a \$3.50 per port charge if the requests are sent through the BellSouth [Graphic User Interface] (GUI); (3) an hourly rated coordination fee for out-of-hours or special arrangement cutovers; and (4) a fee for migrating numbers from Type-1 to Type-2 to facilitate porting. Verizon Wireless Comments at 1-2, 5-6.

<sup>42</sup> Nextel Reply at 6.

<sup>43</sup> *See* Verizon Wireless Comments at 4 n.9 (citing *First Report and Order*, 11 FCC Rcd at 8431-32, paras. 153 and cross-referencing Opposition of Verizon Wireless to LEC Waiver Petitions, CC Docket No. 95-116 (filed Oct. 17, 2003), at 4-6).

<sup>44</sup> Sprint Comments at 3 (citing *Intermodal Order*, 18 FCC Rcd at 23698, 23714-15, 23717, paras. 2, 42-44, 49-51); *see also* CenturyTel Comments at 3 n.11; BellSouth Reply at 11-12; Sprint Reply at 2.

<sup>45</sup> *See* 47 C.F.R. 52.33(a)(1). We note that nothing in this order alters the right of telecommunications carriers other than incumbent local exchange carriers to recover their intermodal LNP costs in any lawful manner, as specified in section 52.33(b) of our Rules.

waiver of the five-year rule for these carriers is consistent with the public interest. Accordingly, to the extent set forth in this order, we grant BellSouth's waiver request in part and otherwise deny it. We do not require BellSouth to file a cost study in support of its waiver request.<sup>46</sup> As discussed below, however, and in accordance with the Commission's rules, carriers seeking additional recovery must file cost support with their tariff revisions.<sup>47</sup> To be eligible for additional recovery, these costs must meet the same strict standards the Commission applied to evaluate the original costs of implementing LNP.<sup>48</sup> With respect to the comments of Nextel and Verizon Wireless urging the Commission to reiterate that portability costs are recoverable only through end-user charges, that is correct, except as otherwise specified in our rules.<sup>49</sup> We deny some commenters' request that we extend this waiver to permit additional end-user recovery for costs associated with complying with future intermodal LNP requirements.<sup>50</sup> Finally, we deny BellSouth's request for a declaratory ruling.

11 The Commission may waive its rules upon a showing of good cause.<sup>51</sup> Thus, a waiver may be granted when the relief requested would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>52</sup> We believe that BellSouth has demonstrated that a waiver of the five-year rule is warranted.

12. First, we do not believe that permitting a limited extension of the LNP recovery period undermines the policy objective upon which the limit originally was based. In the *Cost Recovery Order*, the Commission imposed the five-year limit in order to "enable incumbent LECs to recover their portability costs in a timely fashion, but . . . also [to] help produce reasonable charges for customers and avoid imposing those charges for an unduly long period."<sup>53</sup> BellSouth has estimated that, if allowed additional recovery, it would, alternatively, charge end users 22 cents over a six-month period, 43 cents over a three-month period, or impose a one-time charge of \$1.21.<sup>54</sup> We do not believe that allowing such limited additional recovery harms the policy underlying the five-year rule. Specifically, it does not produce unreasonable charges for customers or impose them for an unduly long period.<sup>55</sup> We further note

<sup>46</sup> Cf. AT&T Comments at 5-7; AT&T Reply at 4.

<sup>47</sup> See BellSouth Reply at 3-5; Sprint Reply at 1-2; Verizon Reply at 2-4.

<sup>48</sup> See AT&T Reply at 6-8.

<sup>49</sup> See 47 C.F.R. § 52.33. With respect to the transaction charges that BellSouth intends to assess on Verizon Wireless, see Verizon Wireless Comments at 1-2, 5-6, BellSouth has stated that, to the extent it imposes such charges, they are standard fees assessed for various services provided to carriers, which are unrelated to the provision of number portability, and therefore are not recoverable through an end-user (or other portability) charge. See BellSouth Reply at 6-9. Because this Order only concerns end-user charges, this is not the appropriate proceeding to evaluate charges assessed against other carriers. As BellSouth observes, fees for non-LNP related services do not satisfy the Commission's cost recovery standards for portability-related charges. See *id.* at 7. Were BellSouth to seek recovery of such costs through its intermodal tariff filing, they would be rejected. However, because BellSouth is not seeking to recover these costs from its own end-users, there is no danger of double recovery.

<sup>50</sup> See n.44, *supra*, and accompanying text.

<sup>51</sup> 47 C.F.R. § 1.3.

<sup>52</sup> See *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

<sup>53</sup> *Cost Recovery Order*, 13 FCC Rcd at 11777, para. 144.

<sup>54</sup> BellSouth Petition at 18-20.

<sup>55</sup> Some commenters argue that, because consumers are accustomed to end-user LNP charges, the impact of such an additional charge will be "minimal." See Sprint Comments at 3; BellSouth Reply at 15-16; see also SBC Comments at 13. Although no commenter challenged this argument, we continue to recognize consumers' sensitivity to end-

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that precluding BellSouth from recovering its intermodal LNP implementation costs *would* undercut the first stated policy goal, which is "to enable incumbent LECs to recover their portability costs in a timely fashion."

13. Second, we believe that BellSouth has demonstrated that special circumstances would make application of the rule inequitable and contrary to the public interest.<sup>56</sup> Repeated delays in the implementation of intermodal LNP made associated cost recovery impractical for carriers that deployed wireline LNP on schedule in the 100 largest MSAs.<sup>57</sup> As some commenters have argued, in the *Cost Recovery Order*, the Commission did not distinguish between the costs of implementing wireline and wireless LNP.<sup>58</sup> Thus, had the two forms of portability been deployed simultaneously, the costs of implementing intermodal LNP would have been recoverable, under the same standards as wireline LNP, in the original end-user charge. Indeed, those incumbent LECs that are just beginning to implement LNP are including both their wireline and intermodal costs in their tariff filings. To the extent that the Commission anticipated in the *Cost Recovery Order* that, beginning with the February 1999 tariff filings, all carriers would be able to recoup their costs of implementing both wireline and intermodal LNP in one five-year levelized charge, however, that prediction was incorrect.<sup>59</sup> When the Commission released the *Cost Recovery Order*, wireless LNP implementation was scheduled to follow wireline LNP implementation by a matter of months in some areas; however, nearly five years would pass before initial intermodal implementation actually occurred.<sup>60</sup> Implementation issues rendered speculative the amount of costs associated with wireless LNP implementation. As Sprint's experience demonstrates, the Commission does not permit recovery of speculative costs, and, to the extent that any carrier sought such

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user charges and have particular concern for the customers of carriers whose original LNP charges have ended and now will be reinstituted. Nevertheless, as the Commission found in the *Cost Recovery Order*, we anticipate that the benefits of number portability, specifically increased choice and lower prices that result from the competition that portability helps make possible, will far outweigh the initial costs. See *Cost Recovery Order*, 13 FCC Rcd at 11707, para. 10. Further, as we concluded in that Order, recovery of LNP costs through an end-user charge best serves the goals of the statute. *Id.* at 11773-74, para. 135; see also *infra* n.65.

<sup>56</sup> *WAIT Radio*, 418 F.2d at 1159

<sup>57</sup> See CenturyTel Comments at 4-5; SBC Comments at 5 & n.17, 7-8; Sprint Comments at 2.

<sup>58</sup> See, e.g., *Cost Recovery Order*, 13 FCC Rcd at 11712-14, para. 18 (noting requirement that CMRS providers achieve portability by June 30, 1999); *id.*, at 11723, para. 36 (concluding LECs, IXCs and CMRS providers all required to bear the costs of establishing industry-wide solution to number portability); *id.* at 11741, para. 77 (declining to create unique cost categories for CMRS providers); *id.* at 11774, para. 136 (concluding that carriers not subject to rate regulation, such as competitive LECs, CMRS providers and non-dominant IXCs, may recover carrier-specific costs directly related to provision of LNP in any lawful manner). Thus, Verizon Wireless' argument that the Commission may not rely on section 251 in connection with recovery of costs related to implementation of intermodal LNP should have been raised earlier, in the context of the *Cost Recovery Order*. Moreover, although the duty to provide number portability under 251(b) may be LEC-specific, the cost recovery provisions of section 251 are not. Specifically, section 251(e)(2) provides that the "cost of establishing number portability shall be borne by all telecommunications carriers on a competitively neutral basis ...." 47 U.S.C. § 251(e)(2) (emphasis added). In its waiver petition, BellSouth, which is a LEC, seeks permission to recover its own costs of providing number portability. Accordingly, reliance on section 251 is appropriate in this context.

<sup>59</sup> It does not appear that any party raised the issue of staggered wireline/intermodal schedules in the context of cost recovery because, although CTIA's petitions for extension of the implementation deadline are referenced in the *Cost Recovery Order*, 13 FCC Rcd at 11713 n.66, accommodation of staggered scheduling is not addressed.

<sup>60</sup> We note that, although basic deployment of wireline LNP in the 100 largest MSAs was scheduled to commence in October 1997 and be completed by December 31, 1998, carriers were not permitted to begin associated cost recovery until February 1999. See *Cost Recovery Order*, 13 FCC Rcd at 11776, para. 142; *First Report and Order*, 11 FCC Rcd at 8393, para. 77, Appendix F; see also 47 C.F.R. § 52.33(a)(1); 47 C.F.R., Part 52, Appendix.



recovery, it was rejected.<sup>61</sup> Nevertheless, those carriers seeking to recover significant, already incurred costs associated with deploying wireline LNP could not be expected to wait for wireless LNP implementation before beginning cost recovery.

14 Even if costs associated with intermodal LNP implementation had been ascertainable by an earlier date, imposition of such costs prior to November 2003 may have been problematic under the separate requirement, established in the *Cost Recovery Order*, that end users be assessed portability charges "only when and where they are reasonably able to begin receiving the direct benefits of long-term number portability."<sup>62</sup> We agree with commenters who argue that it is appropriate to begin cost recovery associated with intermodal LNP now that it has been deployed. Permitting recovery now satisfies the Commission's requirement that incumbent LECs recover portability costs from end users only when end users are reasonably able to receive the direct benefits of number portability.<sup>63</sup>

15 We also believe that allowing incumbent LECs to recover their carrier-specific costs of implementing intermodal LNP will serve the public interest. In the *Cost Recovery Order*, the Commission determined that section 251(e)(2) requires it to ensure that both the distribution and recovery of number portability costs occur on a competitively neutral basis.<sup>64</sup> The Commission decided that recovery by incumbent LECs of carrier-specific costs directly related to providing number portability through an end-user charge best serves the statutory goal.<sup>65</sup> We agree that precluding carriers subject to rate regulation from recovering their intermodal LNP costs, while allowing other carriers to recover such costs, would not be competitively neutral and thus would violate the statutory mandate.<sup>66</sup> Moreover, it would not be competitively neutral to allow those incumbent LECs that are just now beginning to implement LNP to recover both their wireline and intermodal costs but to prohibit carriers that deployed LNP earlier from such recovery. Accordingly, we find that to fully implement the *Cost Recovery Order*, a limited waiver of the five-year rule is in the public interest. As the courts have held, "waiver processes are a permissible device for fine tuning regulations, particularly where, as here, the Commission [has] enact[ed] policies based on 'informed prediction'."<sup>67</sup>

16 Having established that incumbent LECs are entitled to cost recovery as set forth above, we must also determine appropriate implementation and time periods for the assessment of charges to

<sup>61</sup> See *Sprint Suspension Order*, 14 FCC Rcd at 2779-80, para. 4; *Sprint Reconsideration Order*, 14 FCC Rcd at 3828-29, paras. 2-3.

<sup>62</sup> *Cost Recovery Order*, 13 FCC Rcd 11776, para. 142.

<sup>63</sup> *Cost Recovery Order*, 13 FCC Rcd at 11776, paras. 142-43, cited in CenturyTel Comments at 5; SBC Comments at 13, Sprint Comments at 2-3.

<sup>64</sup> *Cost Recovery Order*, 13 FCC Rcd at 11725-26, para. 39. The Commission concluded that the statutory competitive neutrality mandate requires that "the cost of number portability borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace." *Cost Recovery Order*, 13 FCC Rcd at 11731, para. 52. Because the manner in which carriers recover the costs of providing number portability could affect their ability to compete, the Commission found that, in order to ensure that these costs are "borne by all telecommunications carriers on a competitively neutral basis" pursuant to the statutory mandate, it was required to determine both how such costs are distributed and recovered. *Id.* at 11725-26, para. 39.

<sup>65</sup> *Cost Recovery Order*, 13 FCC Rcd at 11773-74, para. 135. The Commission reasoned that carriers may recover costs in the federal jurisdiction only through access or end-user charges. *Id.* Because LNP is not an access-related service, the Commission found that recovering LNP costs through access charges would be inappropriate and would not be competitively neutral. See *id.*

<sup>66</sup> SBC Comments at 3, 12; BellSouth Reply at 13.

<sup>67</sup> See *National Rural Telecom Ass'n v. FCC*, 988 F.2d 174, 181 (D.C. Cir. 1993) (citing *Telocator Network of America v. FCC*, 691 F.2d 525, 550 n.191 (D.C. Cir. 1982)).

effect such cost recovery. Now that intermodal LNP has been deployed, we expect that carriers implementing LNP in the future will include intermodal capability and there will be no need for staggered end-user charges. Thus, any incumbent LECs that have not filed tariffs for LNP cost recovery as of the release date of this order must comply with the five-year rule. In other words, once they have implemented number portability, these carriers should include the initial implementation costs of both wireline and intermodal LNP costs in any future tariff filing and recover these costs over five years.<sup>68</sup> Further, carriers who already have included intermodal costs in filed tariffs will not be eligible for additional recovery under a separate intermodal charge.

17. In the *Cost Recovery Order*, the Commission discouraged carriers from attempting to raise their end-user charge. "After a carrier establishes its levelized end-user charge in the tariff review process we do not anticipate that it may raise the charge during the five-year period unless it can show that the end-user charge was not reasonable based on the information available at the time it was initially set."<sup>69</sup> As we have discussed, at the time the original rates were set, the costs of initial implementation of intermodal LNP were not quantifiable. Accordingly, insofar as the original rates did not recover these initial implementation costs, they were unreasonably low, which satisfies the criterion established in the *Cost Recovery Order*.<sup>70</sup> To address the Commission's independent concern that the end-user charge not be raised during the five-year period, incumbent LECs who have not yet begun intermodal LNP recovery but who are still recovering wireline LNP costs under their original five-year charge should propose a new, levelized intermodal LNP end-user charge to begin when the original charge sunsets.

18. Carriers have proposed a variety of recovery periods for the additional LNP charge.<sup>71</sup> Upon review of competing concerns, we think it best to allow each carrier the flexibility to propose its own recovery period, subject to the prohibition on raising the existing charge. Carriers' proposals will be reviewed by the Commission in the tariffing process. Thus way, each carrier can tailor a recovery period that best suits its own needs and those of its customers. Based upon their own unique circumstances, each carrier should propose an intermodal LNP end user recovery period that it deems appropriate, as outlined in the *Cost Recovery Order*, to enable it to recover its costs in a timely fashion, help produce reasonable charges for customers, and avoid imposing such charges over an unduly long period.<sup>72</sup> As discussed above, the incremental costs of implementing intermodal LNP are expected to be significantly less than the original costs of deploying wireline LNP. Accordingly, although we expect costs to vary among carriers, for the vast majority, the intermodal recovery period should be measured in months, not years, and the charge should be levelized at or lower than the individual carrier's original LNP charge. As noted above, the same standards the Commission applied to evaluate the original costs of implementing LNP will also apply to costs for implementing intermodal LNP.<sup>73</sup> Carriers should follow the guidance provided in the *Cost Recovery Order*, the *Cost Classification Order*, and the *Order on Reconsideration and Application for Review*.<sup>74</sup>

<sup>68</sup> See 47 C.F.R. § 52.33(a)(1).

<sup>69</sup> *Cost Recovery Order*, 13 FCC Rcd 11777, para. 144.

<sup>70</sup> See SBC Comments at 7, BellSouth Reply at 13-14.

<sup>71</sup> See, e.g., BellSouth Petition at 18-20; AT&T Comments at 17-18; Sprint Comments at 3-4, USTA Comments at 5; Verizon Comments at 1-2; AT&T Reply at 8, BellSouth Reply at 9-12.

<sup>72</sup> *Cost Recovery Order*, 13 FCC Rcd at 11777, para. 144.

<sup>73</sup> See *Cost Recovery Order*, 13 FCC Rcd at 11738-41, paras. 68-76.

<sup>74</sup> See generally *Order on Reconsideration and Review*, 17 FCC Rcd 2578; *Cost Classification Order*, 13 FCC Rcd 24495; *Cost Recovery Order*, 13 FCC Rcd 11701; see also *Ameritech Investigation Order*, 14 FCC Rcd 11883; *US WEST Investigation Order*, 14 FCC Rcd 11983. Although carriers generally will recover the additional costs of implementing intermodal LNP over a period shorter than five years, they may recover five years of incremental

(continued . .)

19. We reject the request of CenturyTel and Sprint that the Commission declare that costs associated with any future changes to intermodal LNP requirements (including the issues raised in the open *Further Notice of Proposed Rulemaking*<sup>75</sup>) are recoverable through a new or modified LNP charge without seeking a special waiver.<sup>76</sup> Additional cost recovery associated with porting when there is a mismatch between the rate center associated with a wireless number and the rate center in which a wireline carrier seeks to serve a customer, porting intervals, or any other potential future LNP requirements, should be raised in the comments addressing those open issues. The cost of complying with any proposed regulatory mandate is directly relevant to whether such proposal should be adopted and, accordingly, should be part of the decision-making process. We grant the instant waiver to effect the intent of the original *Cost Recovery Order*, which was to allow the recovery of initial LNP implementation costs.<sup>77</sup>

20. *Declaratory Relief.* As noted, BellSouth also requests that the Commission issue a declaratory ruling that wireline carriers are entitled to a reasonable opportunity to recover their costs of implementing intermodal LNP in accordance with section 251(e)(2) of the Act.<sup>78</sup> We deny this request. The Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to "terminate a controversy or remove uncertainty."<sup>79</sup> The Commission determined in the *Cost Recovery Order* that section 251(e)(2) requires the Commission to ensure that both the distribution and recovery of number portability costs occur on a competitively neutral basis and further decided that recovery by incumbent LECs of carrier-specific costs directly related to providing number portability through an end-user charge best serves the statutory goal.<sup>80</sup> No commenter has challenged that proposition. To the extent that any uncertainty exists on this point, we

(...continued from previous page)

operating costs because they could have recovered these costs if the Commission had permitted carriers to include these costs in their original LNP surcharge filings. To be eligible for additional recovery, however, claimed costs must be demonstrably incremental to (that is, over and above) the costs of implementing wireline LNP. For example, carriers have stated that regional administrative costs will rise significantly as a result of implementing intermodal LNP. Carriers may recover five years of increased administrative costs insofar as the increase is due to the implementation of intermodal LNP. Carriers may not recover five additional years of all administrative costs.

<sup>75</sup> *Intermodal Order*, 18 FCC Rcd at 23714-15, 23717, paras. 42-44, 49-51.

<sup>76</sup> See CenturyTel Comments at 3 n 11, Sprint Comments at 3; BellSouth Reply at 11-12; Sprint Reply at 2.

<sup>77</sup> As noted, section 251(e)(2) provides that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." 47 U.S.C. § 251(e)(2) (emphasis added). In the *Cost Recovery Order*, the Commission determined that "the costs of establishing number portability" include not just the costs associated with the creation of the regional databases and the initial physical upgrading of the public switched telephone network, but also the ongoing costs, such as the costs involved in transferring a telephone number to another carrier and routing calls under the N-1 protocol." *Cost Recovery Order*, 13 FCC Rcd at 11725, para. 38. The Commission also determined, however, that "once incumbent LECs have recovered their initial implementation costs, number portability will be a normal network feature, and a special end-user charge will no longer be necessary to ensure that incumbent LECs recover their number portability costs on a competitively neutral basis." *Cost Recovery Order*, 13 FCC Rcd at 11777, para. 144. We note that, because some incumbent LECs, such as BellSouth, have not yet recovered "their initial implementation costs" of intermodal LNP, this aspect of LNP is not yet a "normal network feature" and a separate intermodal end-user charge to recover these costs is appropriate for these carriers. Although, as discussed, cost recovery for future LNP requirements should be addressed in the rulemaking context, these costs may not be "initial implementation costs" but "normal network features."

<sup>78</sup> BellSouth Petition at 1-2; BellSouth Reply at 2.

<sup>79</sup> 5 U.S.C. § 554(e); 47 C.F.R. § 1.2, cited in AT&T Comments at 3; see also 47 U.S.C. §§ 154(i), (j); *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C. Cir.), cert. denied, 414 U.S. 914 (1973).

<sup>80</sup> *Cost Recovery Order*, 13 FCC Rcd at 11725-26, 11773-74, paras. 39, 135.

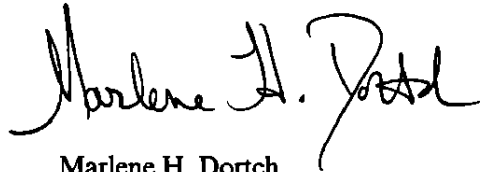
believe our waiver grant adequately addresses it.

#### IV. ORDERING CLAUSE

21. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 2, 4(i), 201-205, 215, 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-205, 215, 251, 332, we GRANT a limited waiver of the five-year recovery rule set forth in 47 C.F.R. § 52.33(a)(1) to all incumbent local exchange carriers that did not include the initial costs of implementing intermodal LNP in already-filed LNP cost recovery tariffs.

22. IT IS FURTHER ORDERED that, pursuant to authority contained in sections 1, 2, 4(i), 201-205, 215, 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-205, 215, 251, 332, BellSouth's Petition for Declaratory Ruling and/or Waiver is GRANTED IN PART AND DENIED IN PART, to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Marlene H. Dortch", is written over a horizontal line.

Marlene H. Dortch  
Secretary

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *Telephone Number Portability BellSouth Corporation Petition for Declaratory Ruling and/or Waiver (CC Docket No. 95-116)*

Congress required number portability in the 1996 Act. Although there are costs involved with number portability, Congress recognized that the consumer benefits—enhanced competition and increased innovation—outweigh the expense.

Six years ago, the Commission determined that incumbent carriers could recover number portability costs through end-user charges over a limited period. At the time, the Commission was less than lucid about exactly what costs could be recovered. The focus of recovery was on the near term costs of portability between wireline carriers, with portability between wireline and wireless carriers further out on the horizon. Five years later, the Commission clarified that wireline carriers have the duty to provide intermodal number portability. As a result, carriers like BellSouth are faced with a situation where the period for recovery will run its course before intermodal costs are taken into consideration. Because this situation is unfair, and based chiefly on the Commission's past failure to be precise about number portability obligations and permissible costs, I support today's action.

Now the burden shifts to carriers seeking additional cost recovery. They will have to file detailed cost data to support tariff revisions. The Commission will need to scrutinize these data carefully before permitting further recovery. Our careful review is all the more critical when you consider that these tariff revisions are destined for line items on consumer bills. The proliferation of line items for number portability and other charges have irritated and confused consumers across the country. With so many end-user charges that differ from carrier to carrier, comparing carriers and plans is like comparing apples to oranges. Consumers need a way to compare apples to apples. They need meaningful and accurate information on their bills, not an explosion of line items that can serve as smokescreens for costs they do not understand.

It's time for the Commission to do something about this. Our truth-in-billing policies have morphed into mass confusion-in-billing. We are overdue for an overhaul of our billing rules. This would be the perfect complement to today's action. I urge the Commission to move forward and take action in this area on behalf of American consumers.

STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN

*Re: Telephone Number Portability, BellSouth Corporation Petition for Declaratory Ruling and/or Waiver, Order*

Through this Notice, the Commission permits carriers to recover the costs that they have incurred to implement intermodal number portability, which allows consumers to bring their telephone numbers with them when they switch providers, whether wireless or wireline. Congress viewed the ability of consumers to keep their phone numbers to be an important component of the effort to develop local phone competition and consumer choice.

I write separately to emphasize that this Commission has an obligation to ensure that carriers seeking to recover their costs of intermodal portability meet strict standards. The Commission's rules require these carriers to file detailed cost support data to demonstrate the reasonableness of these costs. Our review of these filings is essential because it is consumers who ultimately bear these costs. Indeed, we have heard recently from consumer advocates who ask us to redouble our efforts to oversee the "line item" charges on consumer bills. These consumer advocates raise concerns about the legitimacy and accuracy of many of these charges. They raise important questions about the ability of consumers to comparison shop and to ascertain the true costs of competing services. I hope that we will make our review of these concerns a priority.